



General Assembly

Amendment

February Session, 2008

LCO No. 3906

SB0062203906SD0

Offered by:

SEN. WILLIAMS, 29th Dist.

SEN. HANDLEY, 4th Dist.

SEN. LOONEY, 11th Dist.

SEN. MCDONALD, 27th Dist.

SEN. GAFFEY, 13th Dist.

SEN. STILLMAN, 20th Dist.

To: Senate Bill No. 622

File No. 430

Cal. No. 279

**"AN ACT CONCERNING CERTIFICATES OF NEED ISSUED BY
THE OFFICE OF HEALTHCARE ACCESS."**

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 19a-638 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective July 1, 2008*):

5 (a) Except as provided in sections 19a-487a of the 2008 supplement
6 to the general statutes and 19a-639a to 19a-639c, inclusive:

7 (1) Each health care facility or institution, that intends to (A) transfer
8 all or part of its ownership or control, (B) change the governing powers
9 of the board of a parent company or an affiliate, whatever its
10 designation, or (C) change or transfer the powers or control of a
11 governing or controlling body of an affiliate, shall submit to the office,
12 prior to the proposed date of such transfer or change, a request for

13 permission to undertake such transfer or change.

14 (2) Each health care facility or institution or state health care facility
15 or institution, including any inpatient rehabilitation facility, which
16 intends to introduce any additional function or service into its
17 program of health care shall submit to the office, prior to the proposed
18 date of the institution of such function or service, a request for
19 permission to undertake such function or service.

20 (3) Each health care facility or institution or state health care facility
21 or institution which intends to terminate a health service offered by
22 such facility or institution or reduce substantially its total bed capacity,
23 shall submit to the office, prior to the proposed date of such
24 termination or decrease, a request to undertake such termination or
25 decrease.

26 (4) Except as provided in sections 19a-639a to 19a-639c, inclusive,
27 each applicant, prior to submitting a certificate of need application
28 under this section or section 19a-639, or under both sections, shall
29 submit a request, in writing, for application forms and instructions to
30 the office. The request shall be known as a letter of intent. A letter of
31 intent shall include: (A) The name of the applicant or applicants; (B) a
32 statement indicating whether the application is for (i) a new,
33 replacement or additional facility, service or function, (ii) the
34 expansion or relocation of an existing facility, service or function, (iii) a
35 change in ownership or control, (iv) a termination of a service or a
36 reduction in total bed capacity and the bed type, (v) any new or
37 additional beds and their type, (vi) a capital expenditure over three
38 million dollars, (vii) the purchase, lease or donation acceptance of
39 major medical equipment costing over three million dollars, (viii) a CT
40 scanner, PET scanner, PET/CT scanner or MRI scanner,
41 cineangiography equipment, a linear accelerator or other similar
42 equipment utilizing technology that is new or being introduced into
43 the state, or (ix) any combination thereof; (C) the estimated capital cost,
44 value or expenditure; (D) the town where the project is or will be
45 located; and (E) a brief description of the proposed project. The office

46 shall provide public notice of any complete letter of intent submitted
47 under this section or section 19a-639, or both, by publication in a
48 newspaper having a substantial circulation in the area served or to be
49 served by the applicant. Such notice shall be submitted for publication
50 not later than [fifteen business] twenty-one days after [a
51 determination] the date the office determines that a letter of intent is
52 complete. No certificate of need application will be considered
53 submitted to the office unless a current letter of intent, specific to the
54 proposal and in compliance with this subsection, has been on file with
55 the office [at least] for not less than sixty days. A current letter of intent
56 is a letter of intent that has been on file at the office up to and including
57 one hundred twenty days, except that an applicant may request a one-
58 time extension of a letter of intent of up to an additional thirty days for
59 a maximum total of up to one hundred fifty days if, prior to the
60 expiration of the current letter of intent, the office receives a written
61 request to so extend the letter of intent's current status. The extension
62 request shall fully explain why an extension is requested. The office
63 shall accept or reject the extension request not later than [five business]
64 seven days from the date the office receives such request and shall so
65 notify the applicant.

66 (b) The office shall make such review of a request made pursuant to
67 subdivision (1), (2) or (3) of subsection (a) of this section as it deems
68 necessary. In the case of a proposed transfer of ownership or control,
69 the review shall include, but not be limited to, the financial
70 responsibility and business interests of the transferee and the ability of
71 the institution to continue to provide needed services or, in the case of
72 the introduction of a new or additional function or service expansion
73 or the termination of a service or function, ascertaining the availability
74 of such service or function at other inpatient rehabilitation facilities,
75 health care facilities or institutions or state health care facilities or
76 institutions or other providers within the area to be served, the need
77 for such service or function within such area and any other factors
78 which the office deems relevant to a determination of whether the
79 facility or institution is justified in introducing or terminating such

80 functions or services into or from its program. The office shall grant,
81 modify or deny such request no later than ninety days after the date of
82 receipt of a complete application, except as provided for in this section.
83 Upon the request of the applicant, the review period may be extended
84 for an additional fifteen days if the office has requested additional
85 information subsequent to the commencement of the review period.
86 The commissioner may extend the review period for a maximum of
87 thirty days if the applicant has not filed in a timely manner
88 information deemed necessary by the office. Failure of the office to act
89 on such request within such review period shall be deemed approval
90 thereof. The ninety-day review period, pursuant to this subsection, for
91 an application filed by a hospital, as defined in section 19a-490 of the
92 2008 supplement to the general statutes, and licensed as a short-term
93 acute-care general hospital or children's hospital by the Department of
94 Public Health or an affiliate of such a hospital or any combination
95 thereof, shall not apply if, in the certificate of need application or
96 request, the hospital or applicant projects either (1) that, for the first
97 three years of operation taken together, the total impact of the proposal
98 on the operating budget of the hospital or an affiliate of such a hospital
99 or any combination thereof will exceed one per cent of the actual
100 operating expenses of the hospital for the most recently completed
101 fiscal year as filed with or determined by the office, or (2) that the total
102 capital expenditure for the project will exceed fifteen million dollars. If
103 the office determines that an application is not subject to the ninety-
104 day review period pursuant to this subsection, it shall remain so
105 excluded for the entire review period of that application, even if the
106 application or circumstances change and the application no longer
107 meets the stated terms of the exclusion. Upon a showing by such
108 facility or institution that the need for such function, service or
109 termination or change of ownership or control is of an emergency
110 nature, in that the function, service or termination or change of
111 ownership or control is necessary to maintain continued access to the
112 health care services provided by the facility or institution, or to comply
113 with requirements of any federal, state or local health, fire, building or
114 life safety code, the commissioner may waive the letter of intent

115 requirement, provided such request shall be submitted [at least ten
116 business] not less than fourteen days before the proposed date of
117 institution of the function, service or termination or change of
118 ownership or control.

119 (c) (1) The office may hold a public hearing with respect to any
120 complete certificate of need application submitted under this section.
121 At least two weeks' notice of such public hearing shall be given to the
122 applicant, in writing, and to the public by publication in a newspaper
123 having a substantial circulation in the area served by the facility,
124 institution or provider. At the discretion of the office, such hearing
125 may be held in Hartford or in the area so served or to be served. In
126 conducting its activities under this section, section 19a-639, or under
127 both sections, the office may hold hearings on applications of a similar
128 nature at the same time.

129 (2) The office may hold a public hearing after consideration of
130 criteria that include, but need not be limited to, whether the proposal
131 involves: (A) The provision of a new or additional health care function
132 or service through the use of technology that is new or being
133 introduced into the state; (B) the provision of a new or additional
134 health care function or service that is not provided in either a region
135 designated by the applicant or in the applicant's existing primary
136 service area as defined by the office; or (C) the termination of an
137 existing health care function or service, the reduction of total beds or
138 the closing of a health care facility.

139 (3) The office shall hold a public hearing with respect to any
140 complete certificate of need application submitted to the office under
141 this section if (A) three individuals or an individual representing an
142 entity with five or more people submit a request, in writing, that a
143 public hearing be held on the proposal after the office has published
144 notice of a complete letter of intent, and (B) such request is received by
145 the office not later than twenty-one [calendar] days after the date that
146 the office deems the certificate of need application complete.

147 [(d) For the purposes of this section, section 19a-639 or both
148 sections, construction shall be deemed to have begun if the following
149 have occurred and the office has been so notified in writing within the
150 thirty days prior to the date by which construction is to begin: (1) All
151 necessary town, state and federal approvals required to begin
152 construction have been obtained, including all zoning and wetlands
153 approvals; (2) all necessary town and state permits required to begin
154 construction or site work have been obtained; (3) financing approval,
155 as defined in subsection (e) of this section, has been obtained; and (4)
156 construction of a structure approved in the certificate of need has
157 begun. For the purposes of this subsection, commencement of
158 construction of a structure shall include, at a minimum, completion of
159 a foundation. Notwithstanding the provisions of this subsection, upon
160 receipt of an application filed at least thirty days prior to the date by
161 which construction is to begin, the office may deem construction to
162 have begun if (A) an owner of a certificate of need has fully complied
163 with the provisions of subdivisions (1), (2) and (3) of this subsection;
164 (B) such owner submits clear and convincing evidence that he has
165 complied with the provisions of this subsection sufficiently to
166 demonstrate a high probability that construction shall be completed in
167 time to obtain licensure by the Department of Public Health on or
168 before the date required in the certificate of need as the office may
169 amend it from time to time; (C) construction of a structure cannot
170 begin due to unforeseeable circumstances beyond the control of the
171 owner; and (D) at least ten per cent of the approved total capital
172 expenditure or two hundred fifty thousand dollars, whichever is
173 greater, has been expended.

174 (e) Financing shall be deemed to have been obtained for the
175 purposes of this section if the owner of the certificate of need has (1)
176 received a final commitment for financing in writing from a lender, or
177 (2) provided evidence to the office that the owner has sufficient funds
178 available to construct the project without financing.

179 (f) The General Assembly finds evidence of insufficient need for all
180 the nursing home beds approved by the Office of Health Care Access

181 but not yet constructed and finds allowing unnecessary beds and
182 facilities to be built will result in severely damaging economic
183 consequences to the state and to consumers. All certificates of need for
184 nursing home beds granted pursuant to this section shall expire on
185 June 9, 1993, except (1) beds for which an application for financing was
186 received and deemed complete by the Connecticut Health and
187 Educational Facilities Authority prior to March 1, 1993; (2) beds
188 restricted to use by patients with acquired immune deficiency
189 syndrome or traumatic brain injury; (3) beds associated with a
190 continuing care facility which guarantees life care for its residents as
191 defined in subsection (b) of section 17b-354; (4) beds authorized under
192 a certificate of need for an addition of five beds in a facility which has
193 undertaken the addition of ten beds pursuant to section 17b-351; and
194 (5) beds for which twenty-five per cent of project costs have been
195 expended prior to June 9, 1993, as submitted to the Office of Health
196 Care Access in the form of a report prepared by a certified public
197 accountant having no affiliation with the owner of the certificate of
198 need or the developer of the project. A certificate of need which has
199 expired pursuant to this subsection may be reauthorized by the Office
200 of Health Care Access, provided need for nursing home beds exists
201 and twenty per cent or more of the project costs have been expended
202 by June 9, 1993. A request for reauthorization shall be submitted to the
203 Office of Health Care Access no later than July 15, 1993. The office shall
204 issue a decision on such request within forty-five days of receipt of
205 documentation necessary to determine expended project costs. Project
206 expenditures shall cease from June 9, 1993, until reauthorization by the
207 office. Evidence of project costs expended shall be submitted in the
208 form of a report prepared by a certified public accountant having no
209 affiliation with the owner of the certificate of need or the developer of
210 the project. For the purposes of this section, "need for nursing home
211 beds" means there is a demonstrated bed need in the towns within
212 twenty miles of the town in which the facility is proposed to be
213 located, including the town of the proposed location, as listed in the
214 March 1, 1974, official mileage table of the Public Utilities Commission.
215 Bed need shall be projected no more than five years into the future at

216 ninety-seven and one-half per cent occupancy using the latest official
217 population projections by town and age as published by the Office of
218 Policy and Management and the latest available nursing home
219 utilization statistics by age cohort from the Department of Public
220 Health. For the purposes of this subsection, "project costs" means the
221 capital costs approved by the Office of Health Care Access in the
222 certificate of need, exclusive of the cost of land acquisition. Owners of
223 certificates of need for nursing home beds which have expired may
224 apply to the Commissioner of Social Services for compensation on or
225 after June 29, 1993, but no later than September 1, 1993. Such
226 compensation shall be limited to actual verifiable losses which directly
227 result from the expiration of the certificate of need pursuant to this
228 subsection and which cannot be otherwise recouped through the
229 mitigating efforts of the owner, excluding consequential and incidental
230 losses such as lost profits. Such compensation shall not exceed an
231 amount approved by the office within the certificate of need unless the
232 commissioner determines it is reasonable or cost-effective to
233 compensate the excess amount. Notwithstanding any provision of this
234 subsection, no compensation shall be provided to an owner of a
235 certificate of need whose ability to implement the certificate of need is
236 contingent on the outcome of a legal action taken against the owner
237 until the owner obtains a final decision in his favor. An owner
238 aggrieved by the amount of compensation determined by the
239 commissioner may request a hearing in accordance with the provisions
240 of sections 17b-61 and 17b-104. The commissioner may so compensate
241 an owner of a certificate of need for nursing home beds who
242 volunteers to relinquish such a certificate, provided the request for
243 compensation is received by the commissioner prior to July 15, 1993.
244 The commissioner shall notify such an owner as to whether he will be
245 compensated within forty-five days from receipt of notice of voluntary
246 relinquishment or forty-five days of June 29, 1993, whichever is later.]

247 Sec. 502. Subdivisions (2) and (3) of subsection (b) of section 19a-639
248 of the 2008 supplement to the general statutes are repealed and the
249 following is substituted in lieu thereof (*Effective July 1, 2008*):

250 (2) An applicant, prior to submitting a certificate of need
251 application, shall submit a request, in writing, for application forms
252 and instructions to the office. The request shall be known as a letter of
253 intent. A letter of intent shall conform to the letter of intent
254 requirements of subdivision (4) of subsection (a) of section 19a-638, as
255 amended by this act. No certificate of need application will be
256 considered submitted to the office unless a current letter of intent,
257 specific to the proposal and in compliance with this subsection, is on
258 file with the office for [at least] not less than sixty days. A current letter
259 of intent is a letter of intent that has been on file at the office no more
260 than one hundred twenty days, except that an applicant may request a
261 one-time extension of a letter of intent of [up to] not more than an
262 additional thirty days for a maximum total of [up to] not more than
263 one hundred fifty days if, prior to the expiration of the current letter of
264 intent, the office receives a written request to so extend the letter of
265 intent's current status. The extension request shall fully explain why an
266 extension is requested. The office shall accept or reject the extension
267 request not later than [five business] seven days from the date the
268 office receives the extension request and shall so notify the applicant.
269 Upon a showing by such facility or institution that the need for such
270 capital program is of an emergency nature, in that the capital
271 expenditure is necessary to maintain continued access to the health
272 care services provided by the facility or institution, or to comply with
273 any federal, state or local health, fire, building or life safety code, the
274 commissioner may waive the letter of intent requirement, provided
275 such request shall be submitted [at least ten business] not less than
276 fourteen days before the proposed initiation date of the project. The
277 commissioner shall grant, modify or deny such request not later than
278 ninety days or not later than [ten business] fourteen days, as the case
279 may be, after receipt of such request, except as provided for in this
280 section. Upon the request of the applicant, the review period may be
281 extended for an additional fifteen days if the office has requested
282 additional information subsequent to the commencement of the review
283 period. The commissioner may extend the review period for a
284 maximum of thirty days if the applicant has not filed, in a timely

285 manner, information deemed necessary by the office. Failure of the
286 office to act upon such request within such review period shall be
287 deemed approval of such request. The ninety-day review period,
288 pursuant to this section, for an application filed by a hospital, as
289 defined in section 19a-490 of the 2008 supplement to the general
290 statutes, and licensed as a short-term acute care general hospital or a
291 children's hospital by the Department of Public Health or an affiliate of
292 such a hospital or any combination thereof, shall not apply if, in the
293 certificate of need application or request, the hospital or applicant
294 projects either (A) that, for the first three years of operation taken
295 together, the total impact of the proposal on the operating budget of
296 the hospital or an affiliate or any combination thereof will exceed one
297 per cent of the actual operating expenses of the hospital for the most
298 recently completed fiscal year as filed with the office, or (B) that the
299 total capital expenditure for the project will exceed fifteen million
300 dollars. If the office determines that an application is not subject to the
301 ninety-day review period pursuant to this subsection, it shall remain
302 so excluded for the entire period of that application, even if the
303 application or circumstances change and the application no longer
304 meets the stated terms of the exclusion. The office shall adopt
305 regulations, in accordance with chapter 54, to establish an expedited
306 hearing process to be used to review requests by any facility or
307 institution for approval of a capital expenditure to establish an energy
308 conservation program or to comply with requirements of any federal,
309 state or local health, fire, building or life safety code or final court
310 order. The office shall adopt regulations in accordance with the
311 provisions of chapter 54 to provide for the waiver of a hearing for any
312 part of a request by a facility or institution for a capital expenditure,
313 provided such facility or institution and the office agree upon such
314 waiver.

315 (3) The office shall comply with the public notice provisions of
316 subdivision (4) of subsection (a) of section 19a-638, as amended by this
317 act, and shall hold a public hearing with respect to any complete
318 certificate of need application filed under this section, if: (A) The

319 proposal has associated total capital expenditures or total capital costs
320 that exceed twenty million dollars for land, building or nonclinical
321 equipment acquisition, new building construction or building
322 renovation; (B) the proposal has associated total capital expenditures
323 per unit or total capital costs per unit that exceed three million dollars
324 for the purchase, lease or donation acceptance of major medical
325 equipment; (C) the proposal is for the purchase, lease or donation
326 acceptance of equipment utilizing technology that is new or being
327 introduced into the state, including scanning equipment,
328 cineangiography equipment, a linear accelerator or other similar
329 equipment; or (D) three individuals or an individual representing an
330 entity comprised of five or more people submit a request, in writing,
331 that a public hearing be held on the proposal and such request is
332 received by the office not later than twenty-one [calendar] days after
333 the office deems the certificate of need application complete. At least
334 two weeks' notice of such public hearing shall be given to the
335 applicant, in writing, and to the public by publication in a newspaper
336 having a substantial circulation in the area served by the applicant. At
337 the discretion of the office, such hearing shall be held in Hartford or in
338 the area so served or to be served.

339 Sec. 503. Section 19a-639e of the general statutes is repealed and the
340 following is substituted in lieu thereof (*Effective July 1, 2008*):

341 Notwithstanding the provisions of sections 19a-486 to 19a-486h,
342 inclusive, section 19a-638, as amended by this act, 19a-639 of the 2008
343 supplement to the general statutes, as amended by this act, or any
344 other provision of this chapter, the Office of Health Care Access may
345 refuse to accept as filed or submitted a letter of intent or a certificate of
346 need application from any person or health care facility or institution
347 that failed to submit any required data or information, or has filed any
348 required data or information that is incomplete or not filed in a timely
349 fashion. Prior to any refusal and accompanying moratorium under the
350 provisions of this section, the Commissioner of Health Care Access
351 shall notify the person or health care facility or institution, in writing,
352 and such notice shall identify the data or information that was not

353 received and the data or information that is incomplete in any respect.
354 Such person or health care facility or institution shall have [fifteen
355 business] twenty-one days from the date of mailing the notice to
356 provide the commissioner with the required data or information. Such
357 refusal and related moratorium on accepting a letter of intent or a
358 certificate of need application may remain in effect, at the discretion of
359 the Commissioner of Health Care Access, until the office determines
360 that all required data or information has been submitted. The
361 commissioner shall have [fifteen business] twenty-one days to notify
362 the person or health care facility or institution submitting the data and
363 information whether or not the letter of intent or certificate of need
364 application is refused. Nothing in this section shall preclude or limit
365 the office from taking any other action authorized by law concerning
366 late, incomplete or inaccurate data submission in addition to such a
367 refusal and accompanying moratorium.

368 Sec. 504. Subsection (b) of section 19a-681 of the general statutes is
369 repealed and the following is substituted in lieu thereof (*Effective July*
370 *1, 2008*):

371 (b) If the billing detail by line item on a patient bill does not agree
372 with the detailed schedule of charges on file with the office for the date
373 of service specified on the bill, the hospital shall be subject to a civil
374 penalty of five hundred dollars per occurrence payable to the state
375 [within ten business] not later than fourteen days after the date of
376 notification. The penalty shall be imposed in accordance with
377 subsections (b) to (e), inclusive, of section 19a-653. The office may issue
378 an order requiring such hospital, [within ten business] not later than
379 fourteen days after the date of notification of an overcharge to a
380 patient, to adjust the bill to be consistent with the schedule of charges
381 on file with the office for the date of service specified on the patient
382 bill.

383 Sec. 505. Subsection (b) of section 17b-351 of the general statutes is
384 repealed and the following is substituted in lieu thereof (*Effective July*
385 *1, 2008*):

(b) The General Assembly finds evidence of insufficient need for all the nursing home beds permitted pursuant to subsection (a) of this section, but not licensed by the Department of Public Health and finds allowing unnecessary beds to be licensed will result in severely damaging economic consequences to the state and to consumers. An addition of beds initiated pursuant to this section shall be licensed no later than June 9, 1993. A facility which has initiated the addition of beds but has not obtained licensure of such beds, may, no later than July 15, 1993, apply to the Office of Health Care Access for authorization to proceed with completion of the additional beds and application for licensure, provided (A) plans for the additional beds have been approved by the Department of Public Health pursuant to section 19-13-D-8t(v)(4) of the Public Health Code no later than June 1, 1993, and (B) twenty-five per cent of estimated project costs have been expended no later than June 9, 1993, provided project costs may not exceed thirty-one thousand two hundred eleven dollars per bed. The office shall issue a decision on such application within forty-five days of receipt of documentation necessary to determine expended project costs. Evidence of project costs expended shall be submitted in the form of a report prepared by a certified public accountant having no affiliation with the owner of the facility or the developer of the project. The owner of a facility for which completion of additional beds is not so authorized may apply to the Commissioner of Social Services for compensation on or after June 29, 1993, but no later than September 1, 1993, provided plans for the additional beds have been approved by the Department of Public Health no later than June 1, 1993. Such compensation shall be limited to actual verifiable losses which directly result from the failure to gain authorization pursuant to this subsection and which cannot be otherwise recouped through the mitigating efforts of the owner, excluding consequential and incidental losses such as lost profits. In no event may such compensation exceed project costs. An owner aggrieved by the amount of compensation determined by the commissioner may request a hearing in accordance with the provisions of sections 17b-60 and 17b-61. [This subsection shall not apply to any addition of beds pursuant to this section which is part of

421 a construction project that also includes an addition of beds authorized
422 pursuant to subdivision (4) of subsection (f) of section 19a-638.]

423 Sec. 506. (*Effective July 1, 2008*) Section 19a-611 of the general statutes
424 is repealed."